

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 107

The question is whether there is a conflict of interest between the official duties of a City employee and his business interests in a corporation established under the laws of the State of Hawaii to transport corpses for the City as well as for others [the Corporation].

The Ethics Commission [Commission] is of the opinion that there is no conflict of interest.

Following are the facts obtained based on the testimony given by the employee:

1. The employee works for the City as a shift supervisor.
2. His primary official duty is to see that all stations are manned by emergency medical service crews and equipment. He also coordinates private ambulance services and crews, which have been contracted by the City to cover certain districts.
3. He is president of the Corporation, which has the primary function of transporting corpses for the City and private mortuaries. This is the only company that transports corpses in the City.
4. The employee intends to transfer his interest to a child because the child is now capable of operating the business.
5. The Corporation has four full-time and five part-time employees to carry out its function. It is on call 24 hours daily, seven days a week. The employees are paged through beepers from a telephone answering service.
6. The employee previously filed a Form CC-8 regarding the same business activity. The appointing authority found no conflict. As such, no request for an advisory opinion was made of the Commission.
7. The employee testified that his business activity in no way interferes with his official duty with the City. He further testified that he does not use City time, equipment or personnel for his own business interests. He does, however, contact the telephone answering service to obtain service for the City

when the corpse to be transported is under City jurisdiction. Such calls are made when either the police, the medical examiner, or the emergency ambulance crew requests such service while he happens to be on official duty.

8. On (date) the Commission opined that any conflict of interest between the employee's private employment and his official duties became moot because he left the employment of another company that transported corpses for mortuaries in the City and County of Honolulu. The foregoing statement was established by examining documents in his personnel file, which were filed with the Department of Civil Service. The employee subsequently formed the present corporation.

When the foregoing standards of conduct and the facts are examined, the Commission finds that certain facts preclude the application of the foregoing standards in this case. Those facts are:

1. The Corporation enjoys a monopoly because of the nature of the services furnished. That is, it is the only firm that transports corpses for the City and private mortuaries.

2. Any contact with the Corporation by the employee during the time he is on duty as a shift supervisor for the City is based on a contract between the Corporation and the City. Such contract was awarded to the Corporation based on competitive bidding. However the Corporation happened to be the only bidder.

3. Moreover, the Corporation is managed by the employee's eldest child. The employee is not required to be contacted by the Corporation when he is on official duty with the City because the employees of the Corporation carry beepers. Whenever the City or a private mortuary requires the services of the Corporation, it will call a telephone answering service which then relays the message to the Corporation's employee on duty that the services of the corporation are needed. Thus, the employee's testimony that he does not use City time, equipment or personnel for the corporation is credible.

To summarize, the Commission concludes that there is no conflict of interest between the official duty of an employee as a shift supervisor for the City and the Corporation, in which he has a financial interest and is its president. This conclusion is based on the existence of certain facts which make the standards of conduct cited in this case inapplicable. The facts are:

1. The Corporation is a monopoly by virtue of the nature of its business.

2. The employee is required to contact the Corporation when he receives calls that a corpse which is in the City's hands has to be transported to a

private mortuary because the Corporation has a contract with the City to provide such service; and

3. The employee's statement that he does not use City time, equipment or personnel when the City is not involved, is credible because the Corporation has four full-time and five part-time employees and they are reached by a telephone answering service via beeper devices.

The employee has testified that he intends to transfer his office and his related duties as president of the Corporation to his eldest child. The Commission therefore recommends that he transfer his office to his child as soon as practicable, and assume a passive role as a stockholder in the Corporation. Whenever such transfer is completed, this Commission would appreciate it if he would inform it in writing of such transfer. This recommendation is made to allay the appearance of a conflict of interest between his official duties as a City employee and his office and interest in the corporation. The appearance of a conflict of interest is tenable because he is a shift supervisor and as such handles emergency patients. When an accident victim dies enroute to an emergency medical care facility, the Corporation is contacted by the City to transport the corpse to a private mortuary after it has been released by the Medical Examiner.

Dated: August 24, 1982

MAZEPPA K.COSTA
Chair, Ethics Commission